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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Oleg Boyko, an individual, and
Finstar-Holding LLC, a Russian limited
liability company,

Plaintiffs,

v.

Alexey Kondratiev, an individual, and
<olegvboyko.website>,

Defendants.

No. CV-23-01186-PHX-DLR

**PLAINTIFFS' STATEMENT
REGARDING WHETHER THE
PRELIMINARY INJUNCTION
HEARING SCHEDULED FOR
AUGUST 25, 2023 SHOULD BE
EVIDENTIARY OR VIA ORAL
ARGUMENT**

1 Pursuant to the Court's Order, dated July 31, 2023 (ECF 22), Plaintiffs Oleg Boyko
2 and Finstar-Holding LLC ("Plaintiffs"), through their counsel, have met and conferred with
3 defendant Alexey Kondratiev (appearing pro per) to attempt to reach agreement as to
4 whether the hearing on August 25, 2023 should be evidentiary or via oral argument.

5 Although the Court's 07/31 Order directed the parties to submit a joint statement,
6 the parties have been unable to reach agreement on whether the hearing should be
7 evidentiary or via oral argument. Further, Defendant Alexey Kondratiev ("Defendant")
8 has indicated that he intends to bring a separate motion to allow for live testimony at the
9 preliminary injunction hearing. Accordingly, Plaintiffs submit this statement to set forth
10 their position as to why the preliminary injunction hearing should be via oral argument,
11 and not an evidentiary hearing with live witness testimony.

12 First, as a threshold matter, on July 25, 2023, Plaintiffs' counsel and Defendant
13 (collectively, the "Parties") **agreed that the preliminary injunction hearing would be**
14 **via oral argument**, not an evidentiary hearing. A true and correct copy of the
15 correspondence reflecting the same, is attached as Exhibit 1 to the concurrently filed
16 Declaration of Oleg Stolyar ("Stolyar Decl.").

17 However, on August 14, 2023, when Plaintiffs sent Defendant a proposed joint
18 statement reflecting that agreement, Defendant reneged, insisted on an evidentiary hearing,
19 and declared his intention to bring a separate motion to allow for live testimony (via zoom)
20 at an evidentiary hearing. A true and correct copy of the parties' e-mail correspondence,
21 reflecting same, is attached as Exhibit 2 to the Stolyar Declaration.

22 This Court should not permit Defendant to renege on his prior agreement. Plaintiffs
23 have detrimentally relied on Defendant's prior agreement that the preliminary injunction
24 hearing would be via oral argument, and not an evidentiary hearing. As a result, Plaintiffs'
25 witnesses (who reside overseas) now no longer have sufficient time to make the necessary
26 arrangements, including obtaining the necessary visas, to enter the United States in time to
27 appear at the August 25 hearing. For that reason, promissory estoppel bars Defendant from
28 now demanding that the preliminary injunction hearing should be an evidentiary hearing,

1 not an oral argument. *See, e.g., Graham-Sult v. Clainos*, 756 F.3d 724, 749 (9th Cir. 2014)
2 (“Four elements comprise a promissory estoppel claim: (1) a promise, (2) reasonable and
3 (3) foreseeable reliance by the promisee, and (4) injury to the promisee.”).

4 Second, in any event, an evidentiary hearing with live testimony is neither required
5 nor necessary to resolve Plaintiffs’ motion for preliminary injunction. In the Ninth Circuit,
6 there is no right to an evidentiary hearing for a preliminary injunction, nor even a
7 presumption that one should occur. *See U.S. v. Oregon*, 913 F.2d 576, 582 (9th Cir. 1990)
8 (courts have rejected any presumption in favor of evidentiary hearings in regard to
9 injunctions). Rather, it is well-settled that “the refusal to hear oral testimony at a
10 preliminary injunction hearing is not an abuse of discretion if the parties have a full
11 opportunity to submit written testimony and to argue the matter.” *Stanley v. University of*
12 *S. Cal.*, 13 F.3d 1313, 1326 (9th Cir. 1994).

13 Here, the Parties have each submitted briefs supported by written testimony, and
14 will have an opportunity to argue the merits of their respective positions at the August 25
15 hearing. Notably, it is Plaintiffs, not Defendant, who bear the burden of proof at the hearing
16 on the preliminary injunction motion. Thus, any prejudice that might follow from the lack
17 of an evidentiary hearing would work for, not against, Defendant. *Cf. TGI Friday's Inc. v.*
18 *Stripes Rests., Inc.*, 2015 U.S. Dist. LEXIS 62885, at *5 (E.D. Cal. May 13, 2015)
19 (explaining that the denial of discovery prior to a preliminary injunction hearing prejudices
20 the moving party far more than the non-movant).

21 Third, Defendant will suffer no prejudice if the preliminary injunction hearing is an
22 oral argument, not an evidentiary hearing, because in light of the Court’s order
23 commencing discovery (ECF 28), Plaintiffs have agreed to make Mr. Tyndick available to
24 be remotely deposed regarding the contents of his declaration by Defendant in advance of
25 the preliminary injunction hearing. Notably, Defendant refused this offer.¹

26 Fourth, Defendant does not contest any of the matters about which Mr. Boyko
27

28 ¹ A true and correct copy of the correspondence between the Parties, reflecting same, is
attached to the Stolyar Declaration as Exhibit 3.

1 testified in his declaration. Specifically, in his opposition (ECF 23), Defendant does not
2 dispute that Mr. Boyko did not consent to the use of his name in the Infringing Domain
3 (<https://olegvboyko.website>) (*id.*, ¶ 7). And there are no other facts about which Mr. Boyko
4 testified in his declaration that are pertinent to the Motion at issue before the Court.

5 Nor are there any facts in Mr. Boyko's declaration which are not also repeated in
6 the declaration of Mr. Tyndik (the representative of Plaintiff Finstar, which owns the
7 Boyko Mark). Thus, to the extent there is a need for any witness testimony from Plaintiffs
8 at the August 25 hearing (though Plaintiffs maintain that no evidentiary hearing is
9 necessary), that testimony can be provided by Mr. Tyndik, as the representative of the party
10 that owns the Boyko Mark and has filed the claim for cybersquatting under 15 USC §
11 1125(d), which is the sole claim at issue in the Motion – i.e., the claim based on which the
12 TRO was entered.

13 Lastly, with respect to Mr. Stolyar, examinations of opposing counsel are highly
14 disfavored and Defendant has made no showing as to why such a deposition is needed.
15 *See, e.g., Salazar v. Driver Provider Phoenix LLC*, 2022 U.S. Dist. LEXIS 96884, *5 (D.
16 Ariz. May 31, 2022) (“[T]he Supreme Court has suggested that the practice of deposing
17 counsel is generally disfavored, because forcing attorneys to testify may have a negative
18 impact on the litigation process and compromises the standards of the legal profession.”).²

19 For the foregoing reasons an evidentiary hearing is not appropriate here. Rather,
20 Defendant clearly seeks to use it as yet another opportunity to harass Mr. Boyko, by seeking
21 to question Plaintiffs and their counsel concerning baseless accusations of criminality
22 against Mr. Boyko, that have already been rejected by multiple courts; and, in any case,
23 have nothing to with the cybersquatting claim at issue on this Motion.

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28 ² Notably, Mr. Stolyar's declarations largely consisted of him simply attaching documents,
including court filings of which this Court can take judicial notice.

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DATED this 17th day of August, 2023.

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